

**REMARKS**

Reconsideration and allowance of this application are respectfully requested. Claims 1-7, 12, 14, 24, and 26 are cancelled. Claims 8-11, 13, 15-23, 25, and 27-31 remain in this application and, as amended herein, are submitted for the Examiner's reconsideration.

In the Office Action, claims 8-13, 15-25, and 27-31 were rejected under 35 U.S.C. § 102(e) as being anticipated by Walker (U.S. Patent No. 7,342,973). Claims 12 and 24 are cancelled. Applicants submit that the remaining claims are patentably distinguishable over the relied on sections of Walker.

Independent claims 8 and 20 have been amended to more clearly show the differences between the claimed features and the relied on art by incorporating features called for in claims 18 and 30, respectively. No new matter has been added by these changes. Support for these changes is found at, e.g., Figs. 10 and 12-13 and pages 21 and 24-31 of the specification. Claims 8 and 20 are therefore patentably distinguishable over the relied on sections of Walker for at least the reasons as claims 18 and 30.

In the Response to Arguments of the present Office Action, the Examiner contends that "[r]egarding applicant's argument(s) of claims 9-13, 15-25, and 27-31, the claims are addressed for the same reasons set forth above and as applied above in each claim rejection." (See Office Action page 13.) However, in rejecting these claims, the Examiner simply relies on the same sections of Walker that were cited in the prior Office Action dated May 15, 2008. Moreover, in the Response to Arguments, the Examiner cites sections of Walker that describe the selection of frequency bands based on the presence or absence of an interference source. (See Office Action pages 12-13.) These sections are not at all concerned with the

selection of a transmission rate and are not at all concerned with the selection of a transmission rate using field strength values.

Applicants therefore maintain that independent claims 13, 17, 18, 25, 29, and 30, as well as independent claims 8 and 20 which now incorporate subject matter from claims 18 and 30, are each patentably distinguishable over the relied on sections of Walker for at least the reasons set forth in the Amendment dated August 13, 2008. (See Amendment pages 25-30.) Further, each of the claims which depend from these independent claims is distinguishable over the relied on sections of Walker at least for the same reasons as its parent claim.

The Examiner also indicated in the Response to Arguments that "Applicant cannot rely on the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record..." Submitted with the present Amendment is an English-language translation of Japanese Application No. JP 2002-120518 in which the translator, Masaaki Iwami, certifies that the text comprises an accurate translation into English.

Accordingly, Applicants respectfully request the withdrawal of the rejections under 35 U.S.C. § 102(e).

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that the Examiner telephone applicants' attorney at (908) 654-5000 in order to overcome any additional objections which the Examiner might have.

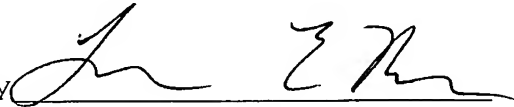
Application No.: 10/511,634

Docket No.: SONYJP 3.3-304

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: March 4, 2009

Respectfully submitted,

By 

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